

FILED

JAN 18 2012

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN HOWARD MORRIS, III,)	No. C 11-5795 JW (PR)
Petitioner,)	ORDER DISMISSING
vs.)	PETITION FOR A WRIT OF
FRANK CHAVEZ, Warden, et. al.,)	HABEAS CORPUS
Respondent(s).)	

Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' (BPH) March 18, 2010 decision to deny him parole. In a nutshell, petitioner claims that the BPH's decision does not comport with due process because it is not supported by some evidence demonstrating that he poses a current unreasonable threat to the public.

In the context of parole, a prisoner subject to a parole statute similar to California's receives adequate process when he is allowed an opportunity to be heard and is provided with a statement of the reasons why parole was denied. Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The attachments to the petition show petitioner received at least this amount of process. The Constitution does not require more. Id.

Whether the BHP's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas. The Supreme Court has made clear

1 that "it is no federal concern . . . whether California's 'some evidence' rule of
2 judicial review (a procedure beyond what the Constitution demands) was
3 correctly applied." Swarthout, 131 S. Ct. at 863.

4 For the foregoing reasons, the petition for a writ of habeas corpus is
5 DISMISSED. And pursuant to Rule 11 of the Rules Governing Section 2254
6 Cases, a certificate of appealability (COA) under 28 U.S.C. § 2253(c) is DENIED
7 because it cannot be said that "reasonable jurists would find the district court's
8 assessment of the constitutional claims debatable or wrong." Slack v. McDaniel,
9 529 U.S. 473, 484 (2000).

10 The clerk shall enter judgment in accordance with this order and close the
11 file.

12
13 IT IS SO ORDERED.

14 DATED: Jan. 17, 2012

15 
16 JAMES WARE
17 United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOHN HOWARD MORRIS III,

Plaintiff,

v.

FRANK CHAVEZ et al,

Defendant.

Case Number: CV11-05795 JW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 18, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Howard Morris C-42642
SCC
3-C-216
5150 O'Byrnes Ferry Road
Jamestown, CA 95327

Dated: January 18, 2012

Richard W. Wieking, Clerk

Susan Imbriani

By: Susan Imbriani, Deputy Clerk